***THE HONOURABLE MR.JUSTICE V.V.S. RAO**

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+W.P. NO. 9811 OF 2004

% 26-08-2004

#SRI SARATHI INSTITUTE OF
ENGINEERING & TECHNOLOGY,
NUZVID, KRISHNA DISTRICT,
REP. BY ITS PRINCIPAL
SRI M. MADHUSOODHAN NAIR,
S/O. M.K. BHASKARA KAMAVAR.

..PETITIONER.

VS.

$ THE REGISTRAR,
THE JAWAHARLAL NEHRU TECHNOLOGICAL
UNIVERSITY, KUKATPALLY, HYDERABAD.
..RESPONDENTS.

! COUNSEL FOR THE PETITIONER: MR. H. VENUGOPAL

^ COUNSEL FOR THE RESPONDENT: M/S. C. KODANDA RAM

< Gist :

> Head Note :

? CITATIONS :

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 9811 of 2004

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Between:

Sri Sarathi Institute of Engineering & Technology,

Nuzvid, Krishna District, rep. by its Principal

Sri M.Madhusoodhan Nair, s/o M.K. Bhaskara Kamavar.

..... PETITIONER

AND

-

The Registrar, The Jawaharlal Nehru Technological

University, Kukatpally, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings dated 5-7-2004 in LR.No.D1/505/2004 on the file of the respondent herein as illegal, arbitrary and void and consequently direct the respondent to forth with issue Essentiality Certificate to the petitioner institution. (prayer is amended as per the court order dated
26-8-2004 in WPMP No.19746 of 2004)

Counsel for the Petitioner: MR.H.VENUGOPAL

Counsel for Respondent: M/S.C.KODANDA RAM

The Court made the following COMMON ORDER:

The petitioner college is offering Engineering Education (B.Tech.) and as well as Post Graduate Course in Computer Science i.e., MCA after obtaining necessary permissions from All India Council for Technical Education and affiliation from Jawaharlal Nehru Technological University (JNTU) the respondent herein. The petitioner made an application to the Registrar, JNTU on 5-4-2004 requesting for issuance of essentiality certificate counter signing the application of the petitioner for availing customs and excise duty exemption for importing Networking equipment for the petitioner-college. The petitioner desires to avail such customs and central excise exemption under the scheme of the Government of India, in Ministry of Science and Technology, Department of Scientific & Industrial Research (DSIR). When appropriate orders are not passed by JNTU, the present writ petition was filed

seeking a declaration that the action of the respondent in not issuing essentiality certificate as illegal and contrary to the scheme.

When the matter was pending at the interlocutory stage, JNTU issued order/letter to the Principal of the petitioner-college informing that the request for issuance of customs and excise duty certificate (essentiality certificate) cannot be considered and accordingly rejected the application. The petitioner, therefore filed an application being WPMP No.19746 of 2004 seeking to amend the writ prayer challenging the letter dated 5-7-2004 issued by JNTU. Initially this court admitted the writ petition and ordered notice. The petitioner filed WPMP No.18913 of 2004 praying this court to expedite the hearing of the writ petition. Therefore, the matter was heard at length at interlocutory stage itself.

The letter dated 5-7-2004 issued by JNTU reads as under.

To

The Principal,

Sri Sarathi Institute of Engineering & Technology,

Nuzividu-521 201

Krishna District.

Sir,

Sub: JNT University, Hyderabad – Academic & Planning –

Request for issue of Exemption of Customs and Excise duty

Certificate to import equipments - reg.

Ref: Your Lr. No. SIET/102/JNTU, dated 5-04-2004.

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With reference to your letter cited, I am to inform you that as per Notification of the Customs and excise Department, Government of India, the Educational institution should be recognized as P.G. level courses in Engineering/Computer Science by Universities to which it is affiliated for getting exemption of Customs & Excise Duty Certificate to import equipments. As per records the Academic activities, infrastructure facilities, faculty position

are not fully meeting the requirements of the college. **The College has not reached to the level of taking up research activities**. Hence your request for issue of Customs & Excise Duty Certificate cannot be considered.

Yours faithfully,

(emphasis supplied)

The learned counsel for the petitioner invites the attention of this court to the letter of DSIR addressed to the Vice-Chancellor of JNTU to which the guidelines for issuance of essentiality certificate to colleges for availing customs duty exemption, were annexed. According to the learned counsel, the petitioner being a college affiliated to JNTU is entitled to claim customs and central excise exemption and therefore JNTU cannot refuse essentiality certificate. This is seriously disputed by the learned Standing Counsel for JNTU. After perusing the scheme for granting exemption from customs and central excise for importing material for scientific and industrial research, I am not able to countenance the submission made by the learned counsel for the petitioner.

The Government of India started giving several fiscal incentives for scientific and industrial research. Government Notification No.51/96 Customs dated 23-7-1996 and Government Notification No.10/97 Central Excise dated 1-3-1997 were issued laying down guidelines for claiming customs and central excise exemption respectively. These guidelines were communicated by the Joint Adviser in the DSIR to the Vice-Chancellor, JNTU. Paragraphs 2 and 3 in the guidelines are relevant and they read as follows.

2) The definition of the University in the above notifications is also follows:

'University' means a University established or incorporated by or under a central, state or provincial Act and includes.

i. An institution declared under Section 3 of the University Grants Commission Act, 1956 (3 of 1956) to be a University for the purposes of that Act.

ii. An institution declared by Parliament by law to be an institution of national importance.

iii. A college maintained by, or affiliated to a University."

3) **Privately funded/managed colleges shall be eligible for issuance of essentiality certificates for customs/central excise duty exemption on equipment, accessories, spare parts and consumables needed exclusively for research, if these colleges satisfy the following criteria:**

- The college which is being issued the essentiality certificate by the university, should be affiliated to the university.
- The college should be recognized as Ph.D level research center in natural/applied/social science or for PG level courses in engineering, computer science, agricultural science by universities to which it is affiliated.

- **The college should have a research/academic council of it sown to screen and approve the research programmes and/or the research programmes should be screened and approved by the university.**

(emphasis supplied)

Insofar as paragraph No.2 is concerned, 'University' means an institution declared to be a University under Section 3 of the University Grants Commission Act 1956 and an institution declared by Parliament to be an institution of national importance and it do not give rise to any difficulty. A university or a Department of university is entitled to claim customs and excise exemption while importing material equipment accessories, spare parts and consumables for scientific and industrial research purposes. Insofar as Paragraph 2 (iii) is concerned it mentions a college maintained by, or affiliated to, a university. It is further explained in paragraph No.3 that a private college is eligible for issuance of essentiality certificate for customs/central excise duty exemption on equipment, accessories, spare parts etc., if the college satisfies the criteria mentioned in paragraph No.3. Such college should have a research/academic council of its own to screen and approve the research programmes and/or the research programmes should be screened and approved by the university. On a reading of Paragraph Nos.2 and 3 together, it is not possible to accept the submission that every college offering technical education affiliated to JNTU is entitled for an essentiality certificate to claim customs exemption.

By letter dated 24-10-1998, the Joint Adviser of DSIR while informing the Vice-chancellor of JNTU that it shall be competent for the university to issue essentiality certificate to eligible colleges, reiterated the same guidelines. A reading of the above letter would further show that incentives by way of customs and central excise exemption are given for equipment, accessories, spare parts etc., and indeed, "for research purpose only" by the organizations mentioned therein. It is not the case of the petitioner that it is engaged in research activities, nor it is the case of the petitioner-college that such research activities have been screened and approved by JNTU. In the absence of these two important criteria, no exception can be taken to the letter of JNTU dated 5-7-2004 rejecting the request of the petitioner for essentiality certificate.

In the result, for the above reasons the Writ Petition is dismissed. No costs.

V.V.S. RAO, J.

26th August, 2004

Js

Note: L.R. Copy to be marked.

ASSISTANT REGISTRAR

To

1. The Registrar, The Jawaharlal Nehru Technological University, Kukatpally, Hyderabad.
2. 2 CD copies.